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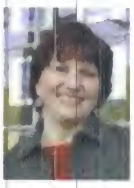
Search
Forum
Donate
LAST Pope
Subscribe
jews/911
Damn MAD
Beerhouse
Blog
Feedback
dna
Bye RCC
AIDS
Home
Surveys
Holocaust
IQ
14th Amdt
19th Amdt
Israelites
NWO
Homicide
Blacks
Whites
Signatory
Talmud
Watchman
Gaelic
TRAITORS
Health?

UNITED STATES CODE, TITLE 42, SECTION 1983









UNITED STATES CODE, TITLE 42, SECTION 1983.
Every person who, under color of any statute ordinance, regulation, custom, or by usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. EVERY PERSON SHALL BE LIABLE IN AN ACTION AT LAW SUIT IN EQUITY NO EXCLUSION FOR JUDGES BY ANY ACT OF CONGRESS.
UNITED STATES CODE, TITLE 42, SECTION 1985
If two or more persons . . . conspire. . for the purpose of depriving. . .any person. . . of the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery of damages . . . RECOVERY OF DAMAGES AGAINST ANY ONE OR MORE OF THE CONSPIRATORS, NO EXCLUSION FOR JUDGES BY ANY ACT OF CONGRESS.
UNITED STATES CODE, TITLE 42, SECTION 1986.
Every person who, having knowledge that any of the wrongs . . . are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do . . . shall be liable . . . EVERY PERSON SHALL BE LIABLE FOR ALL DAMAGES. NO EXCLUSION FOR JUDGES BY ANY ACT OF CONGRESS.
UNITED STATES CODE, TITLE 42, SECTION 1988
"When any court violates the clean and unambiguous language of the Constitution, a fraud is perpetrated and no one is bound to obey it." State v. Sutton, 63 Minn. 147 65 NW 262 30 ALR 660. Also see (Watson v. Memphis, 375 US 526; 10 L Ed 529; 83 S.Ct. 1314)
PLAINTIFFS CONTEND THAT JUDGES NEVER HAD ABSOLUTE OR QUALIFIED IMMUNITY UNDER COMMON LAW -- DEFENDANTS HAVE NO IMMUNITY FROM SUIT.
Plaintiffs also demand Declaratory Relief under 28 U.S.C. 2201, 2202 defining whether or not the named Defendants have any immunity at all since they are creatures of the legislative (Senate) appointment and confirmation process. Since judges are confirmed by the political process then they fall under the purview of WE THE PEOPLE and are under our will. WE THE PEOPLE were and are represented in Congress. Congress passed the 1866 and 1871 Civil Rights Acts specifically to deprive all state officials any immunity from suit. To date there has never been a modification by Congress or a ratification to change any

Constitutional provision, either in the Constitution for the United States of America or any State Constitutions, which ever gave judges or any other state public official any immunities whatsoever. We now have a constitutional issue to be decided by the Federal courts because of the conflict of interest by the state. State judges are empowered by the state Legislative process. The people never gave judges any judicial immunity and it is so stated in the State Constitutions. Defendants have claimed immunity as judges from liability for damages for acts committed within their judicial jurisdiction. They have cited their alleged immunities under common law doctrines that date back to old England and English common law. Defendants have cited numerous U.S. Supreme Court cases to support that their hypothesis of absolute immunity applies to suits brought under the Civil Rights Acts of 1871 (42 U.S.C. 1983). Defendants contend they must be free to act upon their own convictions in the proper administration of justice without apprehension of the consequences. They further contend that the immunity is intended to provide judges with "maximum ability to act fearlessly and impartially without an atmosphere of intimidation or harassment." Defendants have cited Pierson v. Rav, 386 U.S. 547 (1967) as their source for their absolute immunity. Defendants have cited that Pierson states that judges should not be burdened with the fear of litigants "hounding" them with litigation charging malice or corruption.

The U S Supreme Court was in major error with regard to the Pierson case and it took it upon itself, as a Super-Legislative body, in an unlawful manner, to reword the meaning of the enacted Civil Rights law The Supreme Court misconstrued that if Congress had intended to abolish judicial immunity, it would have specifically so provided, had it wished to abolish the doctrine of judicial immunity. The Supreme Court, in its continuance of covering up for the unlawful actions of judges, plainly rewrote the laws of this United States by trying to remove the parts of the Civil Rights Laws that allowed recovery to a person injured by the ruling of a judge acting for personal gain or out of personal motives.

This unfounded misinterpretation is nothing more than an illusion and a distortion of the true spoken meaning of the 42nd Congress in the year 1871. For any Court to change the words or meaning of a Congressionally Enacted Statute is beyond the jurisdiction of such a Court, and any such Court findings should be ignored as blatantly unconstitutional. Therefore, no future Court should give credibility to an improper act of a prior Court. Congress makes laws and only Congress can change their enacted laws.

In Pierson, at page 386 U S 562, the following is stated by the Supreme Court in a misleading manner, leaving out key and important words:

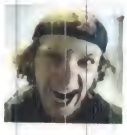
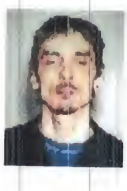
"Hitherto...no judge or court has been held liable, civilly or criminally, for judicial acts...Under the provisions of [Sectlon 1] every judge in the State court... will enter upon and pursue the call of offlclal duty with the sword of Damocles suspended over him..."

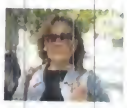
The full statement to the above is as follows:

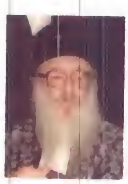
"Hitherto, in all the history of this country and of England, no judge of court has been held liable, civilly or criminally, for judicial acts, and not the ministerial agents of the law have been covered by the same aegis of exemption. Willfulness and corruption in error alone created a liability; and the judiciary has always remained in justice and equity, in intellect and







learning, in freedom and in courage, far, far uplifted above the turmoils, the passions, and the vicissitudes of parties and partisan creeds, the central orb of the highest civilizations, and the sheet anchor of law and order. But no tribunal is sacred in the eye of existing usurpation, and every character, however excellent, must go down under the baleful progress of despotic power. Under the provisions of this section, every judge in the State court and every other officer thereof, great or small will enter upon and pursue the call of official duty with the sword of Damocles suspended over him by a silken thread, and bent upon him the scowl of unbridled power, the forerunner of the impending wrath, which is gathering itself to burst upon its victims". Globe 42nd Congress, 1st Session.March 31, 1866.

The wording of the Civil Rights Act of 1871 was given much time and effort, along with sufficient learned knowledge and understanding as to the impact upon the State judicial system and its judges and other officials along with the input of the Congressional Judiciary Committee. After due deliberation and with forethought of intention pertaining to the nature of the bill, the Civil Rights Act of 1871 was enacted by Congress on April 20, 1871. The basic words of "Every Person and All Persons" were well considered and used to intentionally include any judge that "knowingly and willfully deprived any person of his Constitutional Rights under color of law". Congress had sound reason to include judges, as by experience in the past it was learned that whenever any person or group of persons is held above and beyond the laws, those persons abuse the laws to the prejudice of the people of the nation.

"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a 'minister' of his own prejudices". Pierson v. Rav, 386 U.S. 547, 567.

The 42nd congress in 1871 knew precisely that judges had openly deprived persons of this nation of their Constitutional Rights, and therefore, Congress knowing that State Judiciaries did and would continue depriving Rights, provided the words "Every Person" in the Act, so that anyone suffering deprivations of rights had redress in the Federal Courts. The understanding and meaning of the 1871 Civil Rights Act could not have been made more clear.

1. "The liability of state judicial officials and all official participants in State judicial proceedings under Section 2 [of the Civil Rights Act of 1871] was explicitly and repeatedly affirmed. The notion of immunity for such officials was thoroughly discredited. The Senate sponsor of the Act deemed the idea akin to the maxim of the English law that the King can do no wrong'. It places officials above the law. It is the very doctrine out of which the rebellion [the Civil War] was hatched". Congressional Globe, 39th Congress. 1st Sess., 1758 (1866) Sen. Trumbull).
2. Thus, Section 2 was "aimed directly at the State judiciary". Briscoe v. LaHue, 103 S.Ct. 1108, 1155 (1983).
3. See also, Congressional Globe. 39th Conq.. 1-t 8e-s. at 1778 (Sen. Johnson): section 2 of the 1866 Act "strikes at the judicial department of the governments of the States".
4. Also, as a Member of the House Judiciary Committee, Representative Lawrence declared: "I answer it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily

invaded. The grievance would be insignificant". in Brigco v. LaHue, at 1128.

Plaintiffs are unaware that Congress ever abolished the 1866 or 1871 Civil Rights Acts, or has ever amended it. Moreover, judicial immunity evolved in England and in the early 17th Century Sir Edward Coke in Flovd and Barker, 77 Eng. Rep. 1305 (Star Chamber 1607) and The Case of the Marshalsea, 77 Eng. Rep. 1027 (Star Chamber 1612), laid the foundation for the doctrine of judicial immunity. Coke established requirements for its application, restricting immunity to judicial acts made within the judge's jurisdiction. In addition, he set forth a policy underlying the doctrine:

(1) insuring the finality of judgment;
(2) protecting judicial independence;
(3) avoiding continuous attacks on sincere and conscientious judges; and
(4) maintaining respect for the judiciary and the government.

None of the four policy issues applies to judges anymore because:

(1) State court judges are on a rotating basis and cannot bring a case to finality and Plaintiffs contend that their cases have become proverbial "political footballs" as a result, and their cases look far from being over;
(2) there is no judicial independence because judges are political creatures controlled by the Legislature (Senate) and the whim of the political party that puts them in office and are thus affected by special interest groups;
(3) there are few if any sincere or conscientious judges.
(4)The judiciary and State government have lost all respect from WE THE PEOPLE.

Furthermore, during the time of Coke, the Star-Chamber courts came to symbolize the civilized world's greatest denial of basic individual rights. It became so corrupt, oppressive and violative of individual rights that it was abolished. The Star-Chamber embodied swiftness and power, however, it was not a competitor of common law which the Constitution for the United States of America is based on, so much as a limitation on the rights of the people. The Star-Chamber adopted a practice of forcing counsel upon an unwilling defendant. In most cases, counsel was politically correct to the Star-Chamber's jurisdiction and rulings, whether right or wrong. The defendant's answer to an indictment was not accepted unless it was signed by counsel.

Because the Star-Chamber was a mixture of judicial and executive power, it specialized in trying "political" cases. Plaintiffs' case is identical. They are deprived of their right to a relationship with their biological children, in violation of fundamental, unalienable First Amendment rights to associate and freedom of religion. Given the politically correct hysteria surrounding custody and visitation enforcement, political agends have taken precedence over Constitutional rights.

When Plaintiffs attempted to assert their rights to associate with their children, they were deprived of that right, castigated for trying to assert God-given rights, and then told they were and are not cooperating, a mind set that is reminiscent of the 1950's and 1960's Stalinist Soviet Union. They are held in contempt and threatened with a myriad of sanctions, including imprisonment, if asserting these rights continued. Star-Chamber proceedings are the antithesis of fundamental and basic human rights and as such were abolished in 1641 under the revolutionary government of that time. Today, the

unlawful Star-Chamber has been resurrected by the Family Law Act. Defendants, being sued by Plaintiffs, did exactly what the Star-Chambers did -- acted without jurisdiction but usurped it anyway, by depriving Plaintiffs of a father-child relationship without a compelling state interest.

Defendants took an Oath to Uphold and Defend the U.S. Constitution and the Laws of the United States, 28 U.S.C. 455 (a) and (b). Based on this, immunity doctrine for judges is an artificial judge-created law/fiction and was never lawfully established by any lawful government through the normal procedures. Based on when the doctrine of judicial immunity was established-during the Star-Chamber era-one has to wonder if immunity is at all lawful. Again, Star-Chamber proceedings were the most corrupt, oppressive and tyrannical form of (in)justice in the history of the world. To establish the doctrine of judicial immunity from this abomination is to say that our present judicial system is the progeny of the Star-Chamber (specifically the Family Law Act). If Defendants have to hide behind this purported judicial immunity, the judicial system of this nation has failed as a system and the citizens of this nation demand total accountability for the judiciary at all times. Therefore, Plaintiffs demand total accountability by the Defendants, and demand damages from each of them in their individual capacities.

There is no judicial immunity and Plaintiffs are entitled to and can collect money damages from the Defendants, per a recent Federal District Court case McPherson v. Kelsey, et al. U.S. District Court case number 5:93-cv-166:

State court Judge G. Michael Hocking of Michigan's 56th Circuit Court was sued and lost. Judge Hocking ordered an attorney jailed for contempt when she argued against his unlawful conduct in a custody and visitation matter. The attorney was literally dragged from the courtroom where deputies beat her. She sustained brain damage from the assault. Her client, the father involved in the visitation dispute protested the action. At one point the Judge ran from the Courtroom, instructed his deputies to seize the father, search him at gunpoint and expel him from the courthouse. The father and attorney filed separate 42 U.S.C. 1983 actions. On June 23rd, 1995 Judge Richard A. Enslen of the U.S. District Court for the Western District of Michigan entered a directed verdict against Judge Hocking on First, Fourth and Fourteenth Amendment claims. The jury found against Hocking and awarded the attorney and the father money damages.

Plaintiffs, time and again, have been harassed by the Defendants to the point of terroristic threats of bodily harm, by having Defendants threatening Plaintiffs with contempt (and intimidation of having Sheriff's officers menace Plaintiffs and the threat of physical incarceration) for asserting fundamental rights in the courtroom.

DEFENDANTS VIOLATED THEIR CONSTITUTIONAL OATHS TO UPHOLD AND DEFEND THE CONSTITUTION FOR THE UNITED STATES OF AMERICA BY DENYING PLAINTIFFS THEIR FUNDAMENTAL CONSTITUTIONAL RIGHTS

Defendants took an Oath to Uphold and Defend the Constitution of the United States of pursuant to 4 U.S.C. 101 and 102.

Plaintiffs, being WE THE PEOPLE, assert and maintain that the aforementioned denials of effective assistance of counsel, failure to enforce existing laws that are on the books and are clearly established law, failure to provide Due Process to plaintiffs, amounts to Defendants failing to perform their duties under the Oaths that they took. Those Oaths specifically were employed to protect the people and as a result of the

Defendants' actions, commissions and/or omissions, violated Plaintiffs' fundamental rights, when they violated their own Oaths.

"We [Courts] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would [violate] the Constitution. _ _ _ _ _ _ Cohen v. Virginia, 6 Wheat. 264, 5 L.Ed. 257 (1821). See also, U.S. v. Will, 449 U.S. 200, 66 L.Ed.2d 392,

To the Plaintiffs, being denied basic fundamental rights to substantive as well as procedural due process and equal protection under the laws, starting with denial of effective assistance of counsel and being forced/coerced into not having a relationship with their children, is in violation of the Family Law Act itself. Violating Plaintiff s' Substantive and fundamental rights is in violation of 18 U.S.C. 241 and 242 and 371, by aiding and abetting Plaintiffs' former wives by depriving the minor children and Plaintiffs of a Constitutionally protected, substantive, fundamental right, and violating Plaintiffs' religious beliefs and training. These criminal actions by state judge actors give rise to further federal criminal acts under 18 U.S.C. 4, 18 U.S.C. 2382 and 2383. The Defendants caused and allowed criminal behavior which deprived Plaintiffs of all of rights, and caused their children to be deprived of all of their rights, and interfered with a sacred religious relationship between father and child.

1. The use of coercive methods, to obtain coerced or forced judgments against Plaintiffs to deprive them of their rights to father-child relationships, where no crime existed, a cause of action exists under the Civil Rights Act of 1866 and 1871, 42 U.S.C. 1983. GraY v. Sdillman, 925 F.2d 90 t4th Cir. 1991); Rex v. Teeles, 753 F.2d 840 (lOth Cir. 1985); Duncan v. Nelon, 466 F.2d 939 (7th Cir. 1972).

2. When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has perpetrated a non-judicial' action. Yates v. HoÃ Â¿Â½fman Estates, 209 F.Supp. 757 Ill. D.C. 1962.

3. As long as the Defendants who abridge Plaintiff's constitutional rights act pursuant to a statute or local law which empowers them to commit the wrongful acts, an action under 42 U.S.C. 1983 is established. Laverne v. Corning, 316 F. Supp. 629 (D.C. N.Y. 1970).

Since the Defendants have always contended that they were acting under State law, they became state actors. Defendants are being sued for violating Plaintiffs' fundamentally protected unalienable substantive rights, in their individual capacities, and Eleventh Amendment protections do not apply to named Defendants, even though their actions can only be effected through their official positions. Hafer v. Melo, 112 S.Ct. 358 (1991).

Plaintiffs have been unlawfully denied and deprived of their children, for no reason. Plaintiffs have a number of fact and law issues that must be put before a jury. Defendants are guilty of violating Plaintiffs' constitutionally protected rights pursuant to 18 U.S.C. 241 and 242. Plaintiffs demand damages from the Defendants on the basis of their criminal actions and demand that they also be charged and indicted for their crimes against humanity.

"To assume that Congress, which had enacted a criminal sanction directed against state judicial officials, intended sub silentio to exempt those same officials from the civil counterpart approaches the incredible." Tsee, Xates, Immunity of State

Judges under the Federal Civil Rights Acts, 65 Nw.U.L. Rev. 615, 622-23 (1970). Briscoe v. LaHue, at 1130.

The vested right to act as a judge who has sworn to an oath to uphold and defend the Constitution and adjudicate all matters fairly and to act "under color of law", does not grant a judge to act as an "outlaw". Defendants leave out an important aspect to the accountability of judges. They are politically appointed creatures. The doctrine of absolute immunity is improperly situated when it allows judges to render decisions without fear of consequences, especially since judges are legislative, political creatures who are influenced by the political party to which they honor and to the special interest groups that may affect that political party. In citing the Pierson decision by the U.S. Supreme Court, defendants try to persuade that a judge who errs, or acts maliciously or corruptly, can be corrected in appeal. Given the costs of appeal in this country, only the very rich can afford that luxury. The majority of us have to, but cannot, live with improper, erroneous, malicious, corrupt-ridden, and biased orders of judges that have no bearing on the law or equity, but are based on a particular judge or judges' personal prejudices. Furthermore, all of the judges in positions of review are political creatures as well and are basically above the law and allow personal prejudices to permeate the system.

"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but a minister' of his own prejudice". Pierson v. RaY, 386 U.S. @47, 567 (1967@.

Judges are supposed to be the "supreme law givers", and that is why judges have to be held to the highest accountability of all state actors. Judges who violate the Constitutions and laws of the United States of America lose all immunity from civil suit as well as criminal action. Defendants had and continue to have no right and no compelling state interest, unless in cases of criminal child abuse, to interfere with Plaintiffs' religious rights to raise their children/family and rights to association and privacy in the care, companionship and nurturing of their children.

Plaintiffs note the fact that there are federal rules\laws regarding suing judges for violations of constitutional rights, which is proof enough that it occurs. Plaintiffs further note that phrases like "an error of law" are used when the law is not in error, but when the judge's ruling\order or decision is "in error of the law" or of "case law". This effectively obscures the fact that a judge's ruling is contrary to or in opposition to the law, setting dangerous and misleading precedents.

Plaintiffs further note that the singling out of an individual for legislatively prescribed punishment constitutes a "bill of attainder".

1. It is the duty of the courts to be watchful for CONSTITUTIONAL RIGHTS of the citizen, against any stealthy encroachments thereon." Boyd v. U.S., 116 US 616, 635, (1885)

2. " The judicial branch has only one duty --- to lay the article of the Constitution which is involved beside the statue which is challenged and to decide whether the latter squares with the former. . .the only power it (the Court) has. . .is the power of judgment." U.S. v. Butler, 297 US (1936)

3. "Judges may be punished criminally for willful deprivation of rights on the strength of Title 18 U.S.A. and 242." Imbler v. Pachtman, 424 U.S. 409; 96 S.Ct. 984 (1976)

4. Title 18 U.S.C.A. 242 (U.S. Criminal Code): "Whoever, under color of law, statute, or ordinance, regulation, or custom, willfully subjects any inhabitants of any state to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or Law of the United States. . . shall be fined no more than $1,000 or imprisoned one year or both."
5. Title 18 U.S.C.A. 241, 242 are the criminal equivalent of Title 42 U.S.C.A. 1983, 1985 et seq. "Judges have no immunity from prosecution for their judicial acts." Bradley v. Fisher, U.S. 13 Wall.(1871)
6. "Federal Courts should avoid a ruling that any act of Congress is void on its face if the act can be either construed as constitutional or applied as constitutional." Empire Steel Mfg. Co. v. Marshall, F.Supp. 873 (U.S. District Ct. of Montana -1977)
7. "When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudice." Pierson v. Ray. 386 U.S. 547 at 567 (1967)
8. "We should, of course, not protect a member of the judiciary "who is in fact guilty of using his power to vent his spleen upon others, or for any other personal motive not connected with the public good." Gregoire v. Biddle, 177 F.2d 579, 581.
9. "Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property." Fireman's Ins. Co. of Newark, N.J. v. Washburn County, 2 Wis.2d 214, 85 N.W.2d 840 (1957)
10. Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." Rabon v. Rowen Memorial Hosp., Inc. 269 NSI. 13, 152 S.E.2d 485, 493 (Ã¯Â¿Â½1967)
"Actions by state officers and employees, even if unauthorized or in excess of authority can be actions under 'color of law'. " Stringer v. Dilger, 313 F.2d 536 (U.S. Ct. App 10th Circ. - 1963
11. "A judge is not immune from criminal sanctions under the civil rights act." Ex Parte Virginia, 100 339 (1879)
12. "State officials acting in their official capacities, even if in abuse of their lawful authority , generally are held to act "under color" of law. This is because such officials are " clothed with the authority" of state law, which gives them power to perpetrate the very wrongs that Congress intended Section to prevent. " Ex parte Virginia, 100 U.S. 339, 346-347
"The language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity. . . " Jacobsen v. Henne, 335 F.2d 129, 133 (U.S. Ct. App. 2nd Circ. - 1966) Also see" Anderson v. Nosser, 428 F.2d 183 (U.S. Ct. App. 5th Circ. - 1971)
13. "Governmental immunity is not a defense under (42 USC 1983) making liable every person who under color of state law deprives another person of his civil rights." Westberry v. Fisher, 309 F.Supp. 95 (District Ct.- of Maine - 1970 "Judicial immunity is no defense to a judge acting in the clear absence of jurisdiction." Bradley v. Fisher, U.S. 13 Wall. 335 (1871)
14. As long as a defendant who abridges a plaintiff's constitutional rights acts pursuant to a statute of local law which empowers him to commit the wrongful act, an action under the Federal Civil Rights statute is established. 42 U.S.C.A. 1981 et seq.; Laverne v. Corning, 316 F.Supp. 629
15. "The Supreme Court initially discussed judicial immunity in

Randall v. Brigham, 74 U.S. (7 Wall.) 19 L.Ed. 285 (1869). In Randall, the Court wrote that judges of superior or general jurisdiction courts were not liable to civil actions for their judicial acts, even when such acts, where the acts, in excess of jurisdiction, are done maliciously or corruptly."

16. [Plaintiffs Note that in more recent cases: Stump v. Sparkman, 435 U.S. 349 (1978) and Dennis v. Sparks, 449 U.S. 24 it was found that judges were really not acting in a malicious and corrupt manner and the proofs also showed that. Congress, by its words and meaning, enacted the Civil Rights Act of 1871 and that meaning included judges to be held responsible to an injured plaintiff for the deprivation of Constitutional Rights. Any judge making a case finding to the contrary is hereby challenged as unconstitutional and unlawful. No Court has ever challenged the Constitutionality of the Civil Rights Act of 1871, and therefore said Congressional enacted legislation stands as law. The only way to change an act of Congress is by an act of Congress. No judge can change it and any such findings and changes are not to be upheld in Federal Courts as lawful. No changes in the wording have ever been made to Title 42 U.S.C.A. 1981, 1985, 1986 and 1988 and therefore these Congressional enacted laws are enforceable in the Federal Courts. The only change made to Title 42 U.S.C.A. 1983 took place in 1979. At this time the words "or the District of Columbia" were inserted following "Territory". If any judges or persons representing judges had wanted to make a change this would have been an opportune time to do so. No action was ever taken to change the wording of the law and it remains as such today.]

17. "The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees." Butz v. Economou, 438 U.S. 506, 98 S.Ct. 2910 (1978)

18. [Plaintiffs Note that Federal lawsuits can be brought under both Title 42 U.S.C.A. 1983, 1985, 1986, and/or brought directly under the Constitution against federal officials. Butz at 504 "Referring both to the objective and subjective elements, we have held that qualified immunity (Plaintiffs' Note: or "good faith") would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. . ." Harlow v. Fitzgerald, 102 S.Ct. 2727 at 2737, 457 U.S. 800

19. "I agree with the substantive standard announced by the Court today, imposing liability when a public-official defendant "knew or should have known" of the constitutionally violative effect of his actions. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions, even if he could not "reasonably have been expected" to know what he actually did know. Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies "across the board," to all "government officials performing discretionary functions.," Harlow at 2739, Justice Brennan, Justice Marshall, and Justice Blackmum concurring.

20. In Pierson v. Ray, 386 U.S. 547, Mr. Justice Douglas, dissenting: "I do not think that all judges, under all

circumstances, no matter how outrageous their conduct are immune from suit under 17 Stat. 13, 42 U.S.C. Section 1983. The Court's ruling is not justified by the admitted need for a vigorous and independent judiciary, is not commanded by the common-law doctrine of judicial immunity, and does not follow inexorably from our prior decisions." at 558-559

21. "The position that Congress did not intend to change the common-law rule of judicial immunity ignores the fact that every member of Congress who spoke to the issue assumed that the words of the statute meant what they said and that judges would be liable." at 561

22. "Yet despite the repeated fears of its opponents, and the explicit recognition that the section would subject judges to suit, the section remained as it was proposed; it applied to "any person". There was no exception for members of the judiciary. In light of the sharply contested nature of the issue of judicial immunity it would be reasonable to assume that the judiciary would have been expressly exempted from the wide sweep of the section, if Congress had intended such a result." at 563

23. "We should, of course, not protect a member of the judiciary "who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good." at 564

24. ". . .the judge who knowingly turns a trial into a "Kangaroo" court? Or one who intentionally flouts the Constitution in order to obtain conviction? Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights." at 567

25. "Judges are not immune for their nonjudicial activities, i.e., activities which are ministerial or administrative in nature." Santiago v. City of Philadelphia, 435 F.Supp. 136

26. "It is not a judicial function for judge to commit intentional tort, even though tort occurs in courthouse." Yates v. Village of Hoffman Estates, Illinois, 209 F.Supp. 757

27. "There was no judicial immunity to civil actions for equitable relief under Civil Rights Act of 1871. 42 1983 Shore v. Howard. 414 F.Supp. 379

28. There is no judicial immunity from criminal liability". Id.

29. "Repeated pattern of failing to advise litigants of their constitutional and statutory rights is serious judicial misconduct." Matter of Peeves, 480 N.Y.S. 2d 463.

30. "When a judge knows that he lacks jurisdiction or acts in face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost." Rankin v. Howard, 633 F.2d 844.

31. It is well established that a question of immunity to suit under 42 U.S.C. Ã¯Â¿Â½ 1983 et seq. raises an issue of federal law and that state law cannot immunize conduct of state actors which may otherwise violate constitutional rights. The Supreme Court held in Martinez v. California, 444 U.S. 227. 284 n.8 (1980) that "Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. Ã¯Â¿Â½ 1985 cannot be immunized by state law."

32. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that proper construction may be enforced. See McLaughlin v. Tilendis, 398 F.2d 287, 290 (7th Cir. 1968) "The immunity claim raises a

question of federal law." [Plaintiffs Note that if the Right to Counsel under the Sixth Amendment is not complied with, the Court no longer has jurisdiction to proceed, particularly in child support contempt proceedings and false domestic violence proceedings.]

33. "Judges are not absolutely immune from liability to damages under Civil Rights Act. 42 U.S.C.A. Section 1983 & 1985 Peterson v Stanczak, 48 F.R.D. 426

34. "Under the common law of England, where individual rights were preserved by a fundamental document such as the Magna Carta, violations of those rights generally could be remedied by a traditional action for damages; violation of constitutional right was viewed as a trespass, giving rise to a trespass action. Widgeon v. Eastern Shore Hosp. Center, 479 a.2d. 921

35. "There is no judicial immunity from criminal liability." Shore v. Howard, 414 F.Supp. 379

36. "State judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights." Goss v. State of Illinois, 312 F2d. 1279 (U.S.Ct.App. - Illinois - 1963)

37. "Conduct of trial judge must be measured by standard of fairness and impartiality." Greener v. Green, 460 F.2d 1279 (U.S.Ct. App. - Pa. - 1972)

38. "Judge must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality." 28 U.S.C.A. 144 Pfizer Inc. Lord F.2d 532, cert. denied 92 S.Ct. 2411, 406 U.S. 976 (U.S. Ct. app - Minn. - 1972)

39. "... when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost." Id. [Plaintiffs Note that it is well settled that non-custodial fathers as well as mothers have a constitutionally protected liberty interest in their parent/child relationship and case law as well as statutory law has time and again upheld that right. Judges have complete knowledge of the right of children to have access to both parents during separation and after divorce. For a judge to discriminate on the basis of sex to deny the parent/child relationship or severely limit it without just cause/clear and convincing evidence, causes that judge to lose jurisdiction and therefore judicial immunity because of his discriminatory "ministerial" personal viewpoints.]

40. "Law requires not only impartial tribunal, but that that tribunal appears to be impartial." 28 U.S.C.A. 455. In Re Tip-PaHands Enterprises, Inc., 27 B.R. 780 (U.S. Bankruptcy Ct.)

41. "Judges may be punished criminally for willful deprivation of rights on the strength of Title 18 U.S.A. 241 and 242." Imbler v. Pachtman, 424 U.S. 409; 96 S.Ct. 984 (1976)

42. "Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." United States v. Brown. 381 U.S. 303, 66 S.Ct. 1073 (1946)

43. Alexander Hamilton wrote: "Nothing is more common than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment by acts of the legislature. The dangerous consequences of this power are manifest. If the legislature can

disfranchise any number of citizens at pleasure by general descriptions. "The Constitution outlaws this entire category of punitive measures. The amount of punishment is material to the classification of a challenged statute. But punishment is prerequisite. . ." v. Lovett, 66 S.Ct. 1073, 1083 (1946)

44. "The deprivation of any rights, civil or political, the circumstances attending and the causes of the deprivation determining the fact. " U.S. v. Lovett, 66 S.Ct. 1073, 1083, (1946)

Modified Tuesday, November 02, 2010

PENAL CODE - PEN

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS [11006 - 14315] *(Part 4 added by Stats. 1953, Ch. 1385.)*

TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS [11006 - 11460] *(Title 1 added by Stats. 1953, Ch. 1385.)*

CHAPTER 2. Control of Crimes and Criminals [11150 - 11199.5] *(Chapter 2 added by Stats. 1953, Ch. 70.)*

ARTICLE 2.5. Child Abuse and Neglect Reporting Act [11164 - 11174.3] *(Heading of Article 2.5 amended by Stats. 1987, Ch. 1444, Sec. 1.)*

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law

enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(d) "Commercial sexual exploitation" refers to either of the following:

(1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.

(2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

(Amended by Stats. 2015, Ch. 425, Sec. 3. Effective January 1, 2016.)

Children and Family Research Center

Illinois Child Endangerment Risk Assessment Protocol: FY05 Annual Evaluation

April 1, 2005

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Executive Summary

In 1994, the Illinois Senate passed PA 88-614, which required the Department of Children and Family Services (DCFS) to develop a standardized child endangerment risk assessment protocol and to implement its use by training staff and certifying their proficiency. This act also required DCFS to provide an annual evaluation report to the General Assembly regarding the reliability and validity of the protocol, known as the **CERAP (Child Endangerment Risk Assessment Protocol)**.

The CERAP is a safety assessment instrument and was designed to evaluate the likelihood of immediate harm (to a child) of a moderate to severe nature. This report analyzes the impact of CERAP implementation on the safety of children investigated by the Illinois Department of Children and Family Services (DCFS) for abuse and neglect. For this purpose, safety is defined in terms of the occurrence/non-occurrence of an indicated allegation of moderate physical abuse, severe physical abuse, or severe sexual abuse within 60 days of an initial investigation (also referred to in the report as maltreatment *recurrence*). The evaluation utilizes a research design called a *secular trend analysis* that examines the child safety outcome (e.g., maltreatment recurrence rates) before and after CERAP implementation. Two sets of analyses were completed to examine CERAP effectiveness: 1) trend analysis of recurrence rates several years prior to CERAP implementation through the ninth year post-implementation and 2) comparisons of recurrence rates between investigation cases assessed by child protective services (CPS) workers as safe or unsafe.

Summary of Major Findings

- Similar to overall maltreatment recurrence, rates of moderate to severe maltreatment recurrence have declined in the nine years following the implementation of the safety assessment protocol, which suggests that the CERAP had a positive impact on child safety. However, the trend analyses also suggest that recurrence rates were declining prior to CERAP implementation and may have continued to decline without intervention. Unfortunately, the limitations of the available data prevent a definitive conclusion.
- 60-day recurrence rates for children with multiple maltreatment reports follow the same extended secular trend as those following first reports. Recurrence rates increase as the number of maltreatment reports increase; for example, children with four previous maltreatment reports are much more likely to experience an additional indicated report of maltreatment within 60 days than those with one, two, or three previous reports.
- Additional analyses examined maltreatment recurrence rates in cases with CERAP safety decisions of safe versus unsafe. On average, cases that were assessed by workers as "unsafe" were 2 – 4 times more likely to experience recurrence as those rated "safe."

Conclusions and Recommendations

After several years of evaluation of the CERAP, it can be concluded that children in Illinois are safer (i.e., less likely to experience repeat maltreatment) than they were prior to its implementation in 1995. Unfortunately, the lack of a true experimental design will always prevent definitive conclusions about the effects of a policy intervention such as the CERAP. In all likelihood, numerous and complex factors, including the introduction of the CERAP, led to the declines in recurrence rates seen in Illinois over the past several years.

Future research on the reliability and validity of the CERAP should go beyond the examination of maltreatment recurrence rates and begin to explore *how* CPS workers use the CERAP to make decisions about child safety. In addition, the findings of the current evaluation suggest that future research should involve a careful analysis of CERAP safety plans in an effort to identify the elements of effective plans. Other areas of possible exploration include the factors that predict child safety among groups of children known to be at-risk for maltreatment recurrence, such as infants and toddlers, children served in intact families, and children who experience chronic neglect.

Illinois Child Endangerment Risk Assessment Protocol: Impact on Recurrence of Moderate to Severe Maltreatment

Increased attention to incidents of severe child maltreatment in Illinois during 1993 and 1994 led to the passage of Senate Bill 1357, which became effective as PA 88-614 on September 7, 1994. In part, this bill required that the Illinois Department of Children and Family Services (DCFS/the Department):

- develop a standardized child endangerment risk assessment protocol, training procedures, and a method of demonstrating proficiency in the application of the protocol by July 1, 1996;
- train and certify all DCFS and private agency workers and supervisors in protocol use by July 1, 1996; and
- submit an annual evaluation report to the Illinois General Assembly, which includes an examination of the reliability and validity of the protocol.

In addition, the legislation specified the establishment of a multidisciplinary advisory committee, appointed by the Director of DCFS, which included representation from experts in child development, domestic violence, family systems, juvenile justice, law enforcement, health care, mental health, substance abuse, and social services. DCFS was also required to contract with an outside expert to provide services related to the development, implementation, and evaluation of the protocol.

In response to these mandates, a multidisciplinary Child Endangerment Risk Assessment Protocol (CERAP) Advisory Committee began meeting one week after the legislative mandate became law, and the American Humane Association (AHA) was hired to provide services related to the development and implementation of the protocol. At the time, very few states used formal safety assessment protocols and limited information existed about the effectiveness of these models. The advisory committee made the decision to adapt the New York safety

assessment protocol for use in Illinois, drawing on the wealth of protocol development and curriculum materials available. The CERAP safety determination form developed by the advisory committee consists of four sections:

1) safety factor identification – workers must evaluate the presence or absence of 14 safety factors, describe them, and note any family strengths or mitigating circumstances;
2) safety decision – based on the safety factor assessment and other information known about the case, the worker judges the environment to be safe (i.e., "there are no children likely to be in immediate danger of moderate to severe harm; no safety plan is required") or unsafe (i.e., "a safety plan must be developed and implemented or one or more children must be removed from the home because without the plan they are likely to be in immediate danger of moderate to severe harm");
3) safety protection plan – if the environment is unsafe, the worker must develop a safety plan that relates to the safety factors identified in the first section. Safety plans must describe the specific actions to be taken to protect each child in relation to current safety concerns, the persons responsible for implementing and monitoring the plan, the estimated time frame for the plan, what must happen in order to terminate the plan, and an alternate safety plan;
4) signatures and dates – workers, parents, and supervisors must all sign and date the form to indicate that they have discussed the safety plan and agree to its contents.

Over the following 15 months, a training curriculum and certification criteria were developed, and over 6000 workers and supervisors were trained and tested for proficiency. CERAP implementation "officially" occurred on December 1, 1995, which is the date that all

DCFS workers and private providers had been trained in the use of the protocol and over 99 percent had been successfully certified.

Evaluating the Validity of the CERAP

Although service and policy interventions are most reliably evaluated using an experimental research design with random assignment of subjects to treatment versus control groups, such designs are rarely feasible in natural settings. In such instances, observational research methods (sometimes referred to as quasi-experimental designs), which rely on naturally-occurring groups of people who were and were not exposed to the intervention, are often used. The two most common sources of comparison are historical groups (groups that temporally preceded the introduction of an intervention) and geographical groups (groups that are at a spatial distance from the intervention, e.g. other counties or states). In a quasi-experimental design, the hypothesis that an intervention *does* have an impact would be supported, but not proven, by results indicating significant differences on the outcome of interest between the group exposed to the intervention and the group not exposed. However, because naturally-occurring groups by history or geography will seldom be "statistically equivalent" to the group exposed to the intervention, relevant characteristics that might influence the outcome will be distributed non-randomly between the two groups. Therefore, the influence of these factors should be controlled or assessed through research design and statistical analysis in order to draw valid inferences.

Since it is unethical to purposefully withhold safety assessment from a random "control" group of children, the evaluation of the impact of CERAP implementation on child safety is an example of a program of research that must rely on observational research methods rather than experimental ones. To test the hypothesis that the implementation of the CERAP safety assessment protocol had a significant impact on child safety, researchers from the Children and

Family Research Center (CFRC) at the University of Illinois have employed historical group comparisons in a design called a *secular trend analysis* that examines the child safety outcome before and after the point in time when the implementation of CERAP occurred (December 1, 1995). The hypothesis of CERAP effectiveness or validity would be supported, but not proven, by significant differences on the safety outcome between those exposed to the intervention and those that were not exposed. As with all quasi-experimental designs, however, alternative explanations for observed differences between the two historical groups are possible.

Defining Child Safety

The CERAP assesses child **safety**, defined in Illinois as the likelihood of **immediate harm of a moderate to severe nature**. This definition distinguishes safety/safety assessment from the broader concepts of risk/risk assessment in two ways: 1) the threat of harm to the child must be "immediate" and 2) the potential harm to the child must be of a "moderate to severe nature." Previous evaluations of the CERAP have defined child safety in terms of the occurrence (i.e., recurrence) of an indicated report of maltreatment within 60 days of an initial report. While this definition captures one aspect of child safety – its immediacy – by focusing on maltreatment recurrence within 60 days of an initial report, it fails to distinguish between harm of a moderate to severe nature and other degrees of harm. Therefore, the definition of child safety in the current evaluation was refined to include only recurrences of indicated reports of moderate to severe maltreatment within 60 days of an initial report.

Neither DCFS policy nor the CANTS database include a specific definition of "moderate to severe harm." To examine this outcome, three mutually exclusive groups were defined using allegation codes included in the CANTS database. *Moderate physical abuse* included allegations of cuts, welts, and bruises, human bites, and sprains/dislocations. *Severe physical abuse* included indicated allegations of brain damage/skull fracture, subdural hematoma, internal

injuries, burns/scalding, poisoning, wounds, bone fractures, and torture. *Severe sexual abuse* included indicated allegations of sexually transmitted diseases, sexual penetration, sexual exploitation, and sexual molestation.

Computing Maltreatment Recurrence

The data used in the current report to compute child maltreatment recurrences was obtained from the September 2004 update of the Department of Children and Family Services (DCFS) Child Abuse and Neglect Tracking System (CANTS) database, which contains information on all children involved in investigated reports of child abuse and neglect. Recurrence rates for the trend analyses were computed in a series of steps. First, for each year of observation, the total number of children living in households investigated for maltreatment was identified. This initial group of children includes those with *any* maltreatment allegation, regardless of the severity of the allegation or the allegation finding (i.e., indicated or unfounded). If a child appeared in more than one investigated maltreatment report during the observation year, only the first report for that child was included in the analyses.

The data representing first reports were further refined by selecting only Sequence A reports.[1] Because the CERAP is targeted at the prevention of future maltreatment and children with multiple investigations have higher rates of indication than those in their first investigation, controlling for previous investigations by selecting only Sequence A reports provides a clearer picture of the impact of CERAP implementation. After the total number of children with a Sequence A investigation of maltreatment was defined, children who were taken into temporary protective custody (PC) were excluded from the analyses. Eliminating children taken into

[1] Sequence A is the designation given to the first report on a given *household*, as opposed to the "first reports" on a particular *child*. To select this group, the first report for each child in a given time period is obtained, and then all Sequence A reports are selected. Thus, "Sequence A reports" are a subset of all first reports during a given time period.

protective custody theoretically excludes those children who spent a portion of time out of the investigated (and CERAP evaluated) household.

Using these criteria, the total number of children maltreated each year[2] was calculated. Then, for each year of observation, the number of children who experienced a subsequent indicated report of maltreatment within 60 days of the initial report was determined. Recurrence rates[3] were computed for four different groups: 1) all maltreatment, 2) moderate physical abuse, 3) severe physical abuse, and 4) severe sexual abuse. Recurrence rates for all maltreatment types, regardless of severity, are produced as a baseline for comparison of rates of moderate to severe maltreatment recurrence.

Results of the Recurrence Analyses

The 60-day recurrence rates of all indicated maltreatment types are presented in Table and Figure 1. The results of this trend analysis indicated that recurrence rates were at their highest level in 1986, after which they declined consistently until 1991, then remained relatively level until 1994, at which time they unexpectedly *increased* by 25%. In the year first year following CERAP implementation (1996), recurrence rates declined over 16% and have continued to decline each year thereafter (with the exception of 1998 in which they remained constant) through 2004. This suggests that the implementation of the CERAP had a demonstrable impact on overall short-term maltreatment recurrence rates. However, the trend analysis also reveals that with the exception of the anomalous rate increase in 1994, the decline in recurrence rates began several years prior to CERAP implementation, suggesting an alternative interpretation that maltreatment recurrence would have continued their decline

[2] To coincide with the date of CERAP implementation, observation years begin on December 1 and end on November 30 of the following year (e.g., the first year post-CERAP included maltreatment reports that occurred between December 1, 1995 and November 30, 1996).

[3] Recurrence rates were defined as the number of children who experienced maltreatment recurrence divided by the total number of children with a Sequence A maltreatment report (PCs excluded).